

Special Civil Application No 1810 of 1983

Date of decision: 07/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

AJAY SALT WORKS OF MAHUVA vs THE COLLECTOR, BHAVNAGAR & ANR.

Appearance:

Shri P.J. Vyas, Advocate, for the Petitioner
Shri D.N. Patel, Asst. Govt. Pleader, for the
Respondents

Coram : MR.JUSTICE A.N.DIVECHA

ORAL JUDGEMENT

This petition demonstrates how the technical approach to a problem frustrates the purpose for a particular action. A writ of mandamus is prayed for by the petitioner directing the respondents herein to execute the lease deed in respect of the land allotted to it by the order passed as back as on 1st August 1981.

2. The facts giving rise to this petition move in a narrow compass. The petitioner's application for grant of land for production of salt in villages Mahuva and Gadhada was accepted by the order passed by the Collector of Bhavnagar (respondent No.1 herein) on 1st August 1981. Its copy is at Annexure A to this petition. By that order, a parcel of land bearing survey No. 433/1(part) admeasuring 148 acres situated in village Mahuva and another parcel of land bearing Survey No. 172(part)

admeasuring 111 acres situated in village Gadhada came to be granted to the petitioner for production of salt on certain terms and conditions. No condition was imposed therein with respect to the time-limit in which the lease deed was required to be got executed by or on behalf of the petitioner. It appears that the State Government (respondent No.2 herein) passed one resolution on 31st December 1981 in its Revenue Department specifying the time-limit during which the lease deed has to be got executed if the land is granted for production of salt. The time-limit prescribed therein was 6 months from the date of grant of land. It may be mentioned at this stage that possession of the lands pursuant to the order at Annexure A to this petition was given to it soon after the order. It appears that the petitioner practically complied with all the conditions contained in the order at Annexure A to this petition. It however could not get the lease deed executed. It was called upon to explain such delay and it appears to have explained delay by saying that the delay occurred on account of somewhat unfavourable state of health of its partner. It appears that the cause of delay was not accepted and by the order passed by respondent No. 1 some time in September 1982 the order at Annexure A came to be cancelled. A copy of the order passed some time in September 1982 is at Annexure B to this petition. The aggrieved petitioner carried the matter before respondent No.2 in revision presumably under sec. 211 of the Bombay Land Revenue Code, 1879 (the Code for brief). A copy of the memo of revision is at Annexure C to this petition. By the order passed on 31st January 1983 on behalf of respondent No.2, the aforesaid revisional application came to be rejected. Its copy is at Annexure D to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 226 of the Constitution of India not only for questioning the correctness of the orders at Annexures B and D to this petition but also for a writ of mandamus directing the respondents herein to execute the lease deed with respect to the land granted by the order at Annexure A to this petition.

3. The Government Resolution of 31st December 1981 specifying the time-limit of 6 months during which the lease deed is required to be got executed has not come on record. It is unfortunate that the respondents have also not chosen to bring the said government resolution on record. It cannot however be interpreted as providing a statutory period of limitation for getting a particular action taken or a particular thing done. Besides, since the said resolution was made after the order at Annexure A to this petition, in the case of the petitioner its strict compliance ought not to have been insisted, when the petitioner had taken all steps to fulfil practically all the conditions attached to the order at Annexure A to this petition and was ready for execution of the lease deed though somewhat belatedly. The delay on the part of the

petitioner for execution of the lease deed was neither inordinate nor gross. The explanation for the delay was its partner's indisposition. I think the respondents were not justified in making a technical approach to the problem regarding execution of the sale deed.

4. It may be noted that the grant of lease of the disputed lands in favour of the petitioner pursuant to the order at Annexure A to this petition was for a period of 20 years. The lands are in possession of the petitioner. It would therefore be in the fitness of things if the respondents are directed to get executed the lease deed with respect to the lands granted by the order at Annexure A to this petition. The orders at Annexures B and D to this petition will have therefore to be quashed and set aside.

5. In the result, this petition is accepted. The order passed by the Collector of Bhavnagar (respondent No.1 herein) some time in September 1982 at Annexure B to this petition as affirmed in revision by the order passed by and on behalf of the State of Gujarat on 31st January 1983 at Annexure D to this petition is quashed and set aside. Consequently, the order at Annexure A to this petition is ordered to be revived. The respondents are directed to see to it that the lease deed with respect to the lands granted by the order at Annexure A to this petition is got executed as expeditiously as possible preferably by 31st March 1996. It would be open to the petitioner to produce a certified copy of this judgment of mine before respondent No.1 for expeditious execution of the lease deed pursuant to this judgment of mine. Rule is accordingly made absolute with no order as to costs.
